

# THE STATUS OF HAWAII

## Is Midway Between Territory and States.

(From Wednesday's daily.)

The constitutionality of the income tax law was attacked before the Supreme Court yesterday on half a dozen different grounds. The point generally thought to have the most weight in the arguments to the Supreme Court was that of discrimination between corporations and individuals, which if held to be illegal is admitted will throw out the entire law. If, on the other hand, some of the minor objections to the law are sustained, the defense claims that this would simply result in the law being remedied to the extent of striking out these sections, and the law would still remain in force.

A new and novel fact brought out by the arguments yesterday was that the powers delegated to the Territory of Hawaii far exceed that of any other Territory, and that the status of Hawaii is midway between that of State and Territory.

Both cases, that of the Waimoa Plantation Company, a corporation, and of G. H. Robertson, were presented together.

### GENERAL HARTWELL'S ARGUMENT.

General Hartwell opened the argument with a general statement of the agreed facts in the case at bar, the reading of the papers being waived. He stated that the tax had been paid by the agreement that the money would be held by Assessor Pratt subject to the order of the Supreme Court.

"I am aware," said Mr. Hartwell, "of the extreme caution with which a court always approaches a question of legislative power. It may be assumed that the court will not declare this act invalid, unless the reasons for such action are clear; but I take it that the tax law will receive strict construction by this court."

"In 1897 an income tax law was passed by the Legislature of Hawaii, following closely the law of the United States adopted in 1894. The Supreme Court of Hawaii declared this law unconstitutional because of its lack of uniformity, and because of its being against the Constitution of Hawaii, which, however, is no longer in effect. The provisions of such a law so far as proportionate taxation is concerned, is inherent in the taxable power of any country. This proposition is admitted by Chief Justice Frear in the decision quoted, he dissenting from the opinion of the majority."

Mr. Hartwell quoted from this opinion of the Supreme Court of Hawaii on the first income tax law, and also from Cooley on the powers of States as regards taxation being subject to limitations, also on the uniform ratio, protection against exceptional taxation, etc. He argued that the law laid down in this case of Campbell vs. Shaw was to be considered as the law of Hawaii today, the Organic Act providing that judgments in force previous to annexation remained in force unless different specified in the Organic Act.

"If it does not," he said, "such decision cannot be as effectual as if the Organic Act had not been passed, and as long as it is not unconstitutional, it shall serve as a precedent. This law, no more than that law, has the proper uniformity and equality."

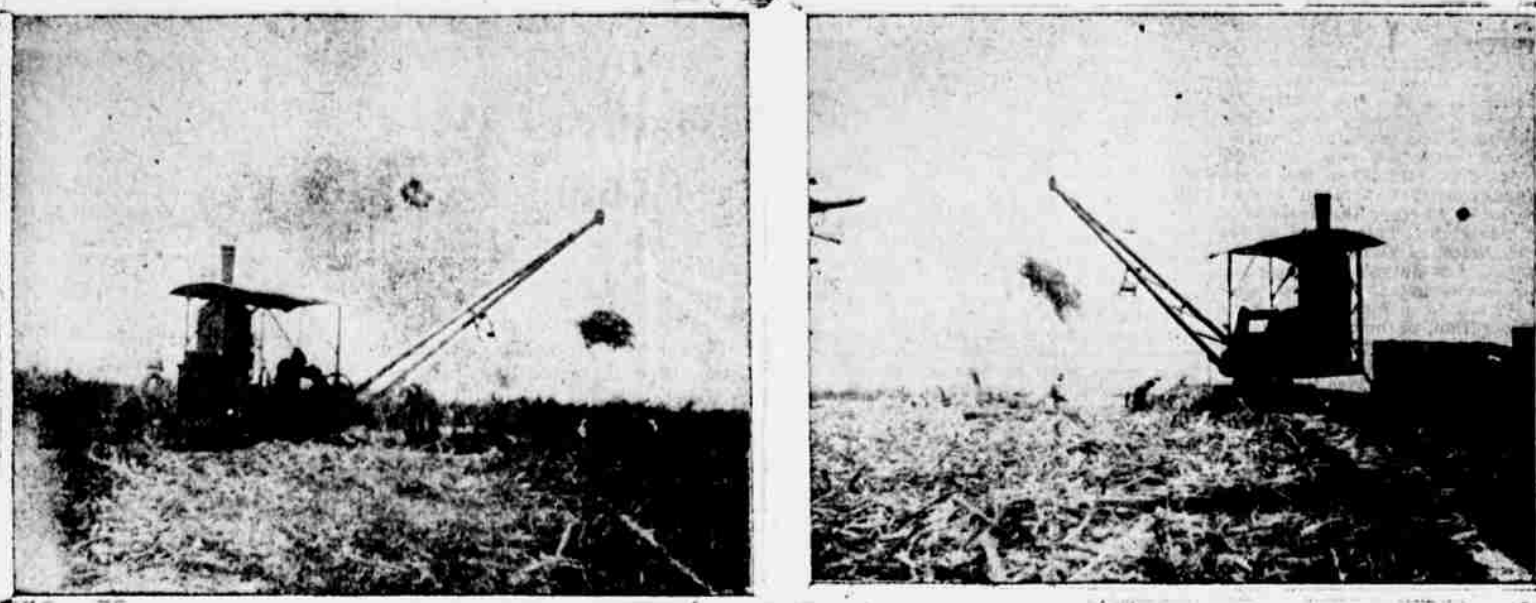
"The Legislature has no inherent power of taxation, no other power than that granted in the Organic Act, which gives the Legislature power to enact laws not inconsistent with the Constitution. Congress itself would be bound in exercising taxing powers, by the limitations of the Constitution, and the Legislature of Hawaii could not exceed the powers of Congress, which it attempts to do in this act."

"The Organic Act of Hawaii is different from that of any other Territory in the United States. In other Territories the Organic Act requires that all laws passed by the Legislature must be submitted to Congress; there is no such requirement for Hawaii. In every Territory there is a provision that there shall be no tax on a public domain, or discrimination against non-residents. The later acts providing for the government of Territories contain the provision that taxation must be in accordance with the valuation of property; there is nothing of that sort in the Organic Act of Hawaii. Is it to be inferred that Congress did not intend to place limitations upon the taxable power of Hawaii? Did it intend to give the Legislature greater power than that held by Congress? I think not. The limitations of the Constitution and of the laws of the United States were also to have effect here. It was no doubt the intention to place Hawaii midway between the status of a Territory and that of a State, and give it certain benefits not allowed other Territories."

Mr. Hartwell then quoted the taxation provision of the Constitution and argued that in view of this section the rule of proportionment and equality was necessary to make the law valid. "For instance, the provision imposing a penalty of 200 per cent by the collector, in the event of false and fraudulent returns, is illegal; he is the sole arbiter, and can inflict this punishment without due process of law, or trial by jury, a proceeding clearly unconstitutional, the act as a whole is void. If there is one condition that would make the law impossible the act is illegal and void."

"Now in regard to discriminations. The section of the law which provides for the taxation of corporations, basing such estimates upon the yearly profits is, I think, a tax upon the privileges of corporations, but this law goes further and discriminates between the earnings of individuals and of corporations. Why should an individual have an exemption of \$1,000 and a corporation pay on

# A MACHINE THAT LOADS CANE BY THE TON



CANE LOADER AT WORK IN A FIELD WITH A HALF TON IN THE AIR.

BY THE ADAPTATION of well-known machinery to the special needs of the cane-field, a loader has been produced which promises to reduce the cost of this the most expensive of all sugar estate operations by at least one-half, and at the same time relieve the laborers of the most exacting tasks they find. The loader, which has been a success in more than one field, consists of a rotating locomotive crane, which by the use of special apparatus is fitted to the task of carrying the bundles of cane from the ground to the cars.

Titled of the loader brought out to the islands for Hamakua by H. W. Ricker, has been most pleasing to engineers and managers. As a regular machine has received the approval of such men as H. P. Baldwin, and the prospects are that it will be ready for general use before the next grinding season. Already there are orders. In the hands of the agents for three more of the machines and the engineer in charge will make some changes, so as to have the crane in shape for any demand which may be made upon them. The crane, which has a working radius of boom of fifty feet, is placed on any three-foot gauge movable track, which is laid parallel with the main track which carries the train to be loaded. The cane which has been cut is gathered into bundles, confined in a sling, one-half ton being put into each of the bundles. The crane, which from its long reach and also from the fact

that it will work on the cane bundles even if they be fifty feet away from the end of the boom, dragging them over the ground until they are finally raised, is swung around until the fall of the wire hoisting line is dropped over the sling, and is attached by one of the men who made the bundle. The engine is of high speed and the bundle of cane is quickly run up and swung over the car, where two men are in waiting to place the cane straight and let go the sling. The cane is dumped, and the hoisting line run back to a waiting sling, the one which has been used being carried back, then the process goes on to the end.

With the wide reach of the boom it has been found that the radius of highest efficiency for the loader is 115 feet. With this distance the machine at one setting will clear an entire acre without being moved. The machine has little in it which is peculiar but is practically the same machine that is used all over the country in handling loads of material. As the load is not meant to be above three tons, the machine itself is made rather light, the one now in use here being about ten tons, and those which will be made for future orders being of but eight tons' weight. Another change which will be made is the placing of two four-wheeled trucks under each of the cranes, so as to distribute the weight. The hoisting is done with a single wire cable, and the slings are simply a rope with a hook at one end and a ring at the other.

The tests so far made have not shown perhaps the highest efficiency, as the cane cars in use are of the stake variety, where the cane must be placed

if the cars would be made to hold their capacity. The plantation, however, will have the cars supplied by the daring sided cars, such as are used on Kauai, and then the loading will be done by the man on the crane, for there has been perfected a device, operated from the platform, which will trip the patent sling just where it is wanted. When this is done the cost of loading the cane will be reduced to a minimum. With all the appliances there will be a speed of the loader which is thought to be 300 tons a day. Another improvement which is being perfected contemplates the loading of the cane with the sling still about the bundle of a half-ton, the weight of which has made a compact bundle, right onto the car and its conveyance to the mill in that shape. There a light policy will unload the one and a tender will dump it, remove the sling and send it back to the field.

As furnishing a line upon the value to the plantations of such a machine, under the old system a good man, one who has a stout heart, could load six tons of cane in a day, for which he was paid at the rate of twenty-five cents a ton. Remove the necessity of this man carrying the cane up to the cars and he would pile thirty tons of the stalks into the slings ready for the hoist. Even this will be done away with in the future, for when the cane is cut it will be put into the slings by the cutters. This will mean that there will be no unnecessary work or expense about the handling of the cane. There is still a difficulty, in that while a good loader might put into a car eight or nine tons the machine loader, which

cannot place the stalks, will not get more than five or six into the same car. This may be bettered when the cane is left in the sling. Another feature of the matter is that with the loader there is no dear labor, but the men who get the ordinary wages will be able to do the work. Of the many advantages that the loader can be run to the edge of a gulch and there it will collect all the cane, saving the work of the men, seems to be that which is most appreciated on the plantations. The engine boiler consumes crude oil, so that the cost of operation is less than \$1 a day. It is indestructible for one was caught in a fire at Paia and while its tender was burned, it was all right.

The adapting of this machine for the work was done by Mr. W. W. Ricker, one of the best known of the young engineers here. The representative of the Brown Hoisting Machine Works of Cleveland, he has studied the question of cane problems until he was ready to offer this machine. When the planters wanted such an invention an offer was made of \$1,500 for the plans and invention. Engineers said it was not a good offer, and this was shown later when a firm of machine builders in the East offered the planters to take any invention they might get and endorse, off their hands and pay \$100,000 for the rights.

Mr. Ricker is a Cornell man who, when he found himself out of school and without place, went into the shops of the Browns as a machinist, and worked his way to the front. While he has some patents on the adaptation of the cane-loader, he claims only that it is a new use for an old machine.

not profits? Why a discrimination between the property of an individual and of a corporation? It makes no difference whether the discrimination is in favor of the individual or of the corporation, we claim it is an unlawful discrimination—a capricious one, if you please. A man with an income of \$5,000 a year may have nothing left at the end of a year, yet he is allowed but a thousand dollars. The corporation may have a much less expense proportionately. If that be unlawful discrimination, the whole law is illegal, and if that contention be sustained by your honors it would be practically impossible to enforce the law, without that provision."

"Inheritances are taxed under the general law if received before January 1st, yet the income tax provides that inheritances shall be taxed, unless the heirs have paid the inheritance tax. This in my opinion would be a case of duplicate taxation and consequently illegal."

"It may be argued that the present law is not burdensome; no matter how inconsiderable the burden of this law, there is no telling how heavy it will be made in the future. If this court holds that no limitations are placed by the constitution upon the Legislature of Hawaii, we all know what it will lead to in the end. It would be a remarkable instance of untrammeled power if the Legislature could do what Congress cannot do. The general tax law already taxes real estate, and now comes this law and taxes the income upon it."

"Under this law insurance companies pay but 1 per cent, while all other corporations pay 2 per cent. Has the Legislature any power to make such distinction in the class or corporations? If it has, then it could provide a separate tax for coffee corporations, sugar companies, etc. It could say that rice planters shall pay so much, sugar corporations so much, and so on through the entire list. If one corporation is picked out, it is an unjust discrimination, not because it would make so much difference in the amount, but because of the principle of the law."

"This concluded the argument, at the close of which Judge Galtbraith asked: 'How could a proportionate tax, as provided by the constitution, be made?'"

"It is practically impossible," responded Mr. Hartwell.

MR. LEWIS' ADDRESS.

Mr. Lewis followed the opening speaker with a more exhaustive argument, quoting liberally from authorities to sustain his points. He began with the general statement of his ground of contention, arguing that the law was invalid for the following reasons: Discrimination between corporations and individuals, unlawful exemptions, unlawful penalties, taxation of the salaries of the chief justice, and associate justices, and of the circuit judges; taxation of United States bonds; and in conclusion, because the act as a whole was illegal. "To begin," said Mr. Lewis, "the income tax as a whole is objectionable, because it makes the burden difficult to apportion. It has never been looked on with favor because it pries into the private affairs of individuals and corporations, and has always been the last tax restored to by States or Territories. As to the discrimination: Corporations are as much entitled to have the protection of the law as are individuals; absolute conformity cannot be obtained under any system, but when there is a plain and unjust discrimination as in the case here, it is in violation

of the constitution of the United States. The tax is not upon a franchise or business of a corporation, which the government giving the franchise to these corporations may have the right to tax, but this is simply a question of whether the property is owned by an individual or by a corporation. It may be said by counsel for the government that the exemption 'unless he' is a little difference in the general distribution of the tax, but this has no bearing, it is the principle that is in violation of the law."

"As to the unlawful exemptions of insurance companies, the underlying principle of taxation is that any such exemption must result from some public service. What have the insurance companies done that they should be subject to such exemption?"

"The Supreme Court has held an exemption of \$2,000 to be unreasonable. Is this exemption of \$1,000 any more reasonable? Is it purely for living expenses? If it is, why should only one in a family be exempt? I think this is a case of special legislation against the married men in favor of the single men. If a woman is teaching school, why should she not be exempted, because her husband happens to be working. It seems to place a tax upon industry."

"The law is unconstitutional in that it violates article 5, which provides that no person in a criminal case shall be compelled to testify against himself, and also grants the right of a speedy and public trial. This law requires corporations and individuals to produce their books, and the assessor is given authority to summon witnesses who must give testimony. It provides for the incrimination of self, and gives no protection to a person brought before the assessor to testify. This makes the act illegal in that the constitution provides that no man must testify against himself." Mr. Lewis made numerous citations in support of this contention.

After the noon hour court resumed with Mr. Lewis still speaking. "I wish to lay particular stress on the words 'false and fraudulent' in the law, the word false may mean untrue or incorrect, and yet the assessor may add a penalty of 200 per cent if it is found to be the case. This punishment is extreme and unlawful, and violates the constitution, which provides that no excessive fines shall be levied, or any undue or unusual punishment inflicted. The taxpayer in this instance has no defense. A 200 per cent penalty is taking property without due process of law."

"The estimates of income includes all notes, mortgages and bonds, excepting those of the Territory of Hawaii. We have pointed out that United States bonds shall be taxed, but it would seem that when exceptions are made in the case of bonds, and United States bonds are not included, it must mean to tax United States bonds, which is also clearly unconstitutional." Judge Galtbraith: "It seems that the Legislature did not mean to tax United States bonds, as the returns do not show that."

"One point in my contention," continued Mr. Lewis, "is that if this act is void in parts it is void as a whole. We have pointed out inconsistencies which if court sustains, nullifies the whole law, because it would so mutilate the act that it would not come within the intention of the Legislature which drafted the law. Where parts are intimately connected, and the court believes that the Legislature wanted to pass the act as a whole, would the remainder of the act be valid if it did not come within the intentions of the Legislature?"

The reports show that the classification made by a corporation must be of a nature that the Legislature had a right to make. Congress itself would be bound in exercising taxing powers by the limitations of the constitution. If the Legislature wants to tax corporations greater than under the general law, let it make a franchise tax, but when it proposes to tax property under the conditions of the income tax law it is going clearly beyond its powers."

MR. ROBERTSON DEFENDS LAW.

Mr. Robertson followed Mr. Lewis in an argument favoring the validity of the law. "There are but two points presented by the opposing counsel which would affect the validity of the act. If the classification of corporations and individuals is held to be unjust discrimination, then the whole act is void. I submit, though, that if the court should hold that the claim of double taxation be sound, it would not have the same effect, but would only exempt the property so affected. The taxation of the salaries of justices of the Supreme Court, of judges of the Circuit Court, and the question of penalties, are not directly involved, and would, if extended, not result in the setting aside of the act? It would not follow that if these parts were not sustained, that it would void the act as a whole. If the court holds that the penalty attached is excessive and illegal, it does not follow that the law is illegal, but only that such penalty will not be allowed. The section which is declared illegal will necessarily have to be stricken out."

"Congress delegated to the local Legislature a very broad power, as counsel on the other side has already stated. This power extends to all subjects of the Legislature, and the power of taxation is one of them, perhaps the most important delegated to the Legislature by Congress, without qualification. There is nothing to limit the power of the Legislature in the matter of taxation, though there are limitations in many other matters. I contend that by virtue of the broad powers conferred, the Legislature is untrammelled in this power, except as limited by the fourteenth amendment to the constitution."

"This amendment, however, does not bind any Legislature to any iron rule. The Legislature may still make taxation laws with such distinctions as the circumstances may require. The levy of any tax implies an exemption of some sort."

"If the owner of a female dog was taxed \$5 and his neighbor, who owned a male dog, was not taxed, he could not come in this court and say he had been unjustly discriminated against." "How far do you think the court can go in considering the classifications made by the Legislature?" asked Judge Galtbraith.

"I don't believe the court can go very far. There is not a single case in the authorities before me where the Legislature proceeded on general lines of taxation of corporations, and was not sustained by the courts."

"It is for the Legislature to decide who and what shall be taxed, and what shall not be taxed. If it is the right of the Legislature to say what shall be taxed, it seems to me it is given also the right to say what shall be exempted. This rule of general exemption is left to the discretion of the Legislature."

but little choice, when a tax of 2 per cent on net receipts of other corporations is considered.

"It cannot be said that there is any exemption of insurance companies. All taxation laws must be considered together. On the subject of duplicate taxation—it is in a certain sense double taxation, but in another sense it is not a double tax on property. Under the general law of 1896 only tangible property is taxed. When the income on that property is taxed it cannot be called double taxation. It seems to me that there is a distinction between capital and income, just like a government bond. That is the capital, but the coupon you clip from it is not capital, but income."

"Regarding the contention as to penalty, that does not directly concern this case, it is only incidental. The imposition of this penalty is not unconstitutional. I take it that the taxpayer is entitled to a hearing before the tax appeal court under the law of 1896. There is nothing here to show that the penalty can be added without the right to appeal. This act would stand and be operative even if that section is void."

"I don't believe that there has been any objection cited that would hold water. Perhaps one of these minor propositions may be affected, but that would not invalidate the law as a whole."

"I think that it would be interfering with the legislative powers to declare this act void. Taxes cannot be levied by the executive or judiciary departments. This is a right delegated to the Legislature. If it was not allowed to levy taxes, the business of the government would have to be suspended. The discretion left to the Legislature is broad."

"A comparison of the present income tax law with other systems shows it to be extremely mild, both in the matter of discrimination and of exemption. Far more stringent laws have been sustained by the courts."

MR. HARTWELL REPLIES.

Mr. Hartwell replied briefly to the argument, stating that the Legislature instead of levying this income tax, could have added to the general tax, that the present law was blocked out after the former law, which was declared null and void, and also after the United States law which was overruled by the Supreme Court. If the law contained such radical defects as had been presented it argued that it should be set aside as a whole. Concluding, he said: "The corporation pays a tax only on its net income, while individuals are allowed a deduction of but \$1,000. This discrimination totally precludes the possibility of proportionate taxation and of uniformity."

The question is to be further presented to the Supreme Court on briefs which will be filed Friday. The Supreme Court adjourned to this morning at 10 o'clock, when the hearing in the Paia case will be resumed.

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